

### REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

#### Claim status/Amendments

In this response, claim 5 has been amended to change Teflon® to polytetrafluoroethylene in accordance with the objection raised on page 2 of this Office Action.

#### Rejections under 35 USC 103

Most inventions, including the present invention, are composed of elements and components, which are known by themselves. Applicant concedes that Prosenz (U.S. Patent 4,376,594), teaches in general the shape of the basic element, and as the Examiner has acknowledged, "Prosenz does not teach the material different from that the main portion of the barrier to be surrounding the rod", and hence, does not teach the claimed invention, which directed to the absorption of energy by a material upon impact.

Claim 1 specifically defines "a rod traversing said horizontal surface and inter-connecting said elements"... Contrary to the Examiner's statement that "it would have been obvious to one ordinarily...to have used the configuration of Thompson with the barrier of Prosenz in order to include a bushing as taught by Thompson", Applicant does not understand how the Examiner proposes to do so, namely, how does the Examiner suggest to replace the rod traversing the two horizontal surfaces according to the present invention with the rod traversing the bushing 40 of Thompson. The Thompson arrangement is actually a commonly used door hinge, which could be utilized with the basic barrier element of the present invention only along vertical meeting surfaces and not horizontal surfaces for the purpose of allowing movement of the crash barriers according to the present invention, and as disclosed by the cited Fig. 5 of Prosenz.

Furthermore, as described in Thompson, the purpose of the "fittings for end coupling of

a barrier to like barriers (is that) the fittings permitting adjacent barriers to be located at different heights to accommodate... (Abstract, lines 14 to 17; col. 9, lines 54 to 60). This is obviously not the case with the basic element of Prosenz and according to the present invention.

In addition, as described in lines 38 to 48 in col. 8 of Thompson, the protuberances 36, which include a pin bushing 40, are "integrally molded" (lines 42 - 43) with wall 16, and thus, the Examiner's argument as if the material of protuberances 36 (not 40, as 40 is a bushing, namely a hole), differs from the material of the barrier, is unfounded and contrary to Thompson's actual teaching.

Also, the Examiner's statement that "Thompson discloses a material 40 different from the barrier to be surrounding the connecting rod 42" has nothing to do with the definition in claim 1, that states that the energy-absorbing material is different than the solid material of which the structural barrier elements are made.

The Examiner's argument set forth at lines 4 to 8 of page 3 of the Action are not at all understood. The Examiner states that "the materials are not disclosed by Prosenz in association with the energy-absorbing material (8);"... 8 in Prosenz is a pin joint and not an energy-absorbing material, as described and defined in the present application.

The Examiner maintains the position "that it would have been obvious... to have used polytetrafluoroethylene as a coating on the coupling structure of Prosenz, in order to ease connection and disassembly of adjacent barriers". We just fail to understand what this has got to do with the present invention, which specifically describes a material, the purpose of which is not to "ease connection and disassembly of adjacent barriers", but, on the contrary, which is adapted to absorb impact energy on the barrier elements, which material could be constituted by rubber, a metallic sponge, a metal spring or an hydraulic fluid.

For all of the above reasons, it is clear that the combination of the teachings of Prosenz and Thompson, even if they could at all be combined, which is strongly denied, does not result in the present invention, as claimed in claim 1.

Since the remaining claims, namely, 2, 3, 5, 6, 12, 13 and 16 are claims dependent from claim 1, we believe that these dependent claims also set forth patentable subject matter.

The rejection of claims 1-3, 5, 6, 13 and 16 under 35 U.S.C. 103(a) as being unpatentable over Prosenz (U.S. Patent 4,376,594) in view of Thompson (U.S. Patent 4,681,302) are therefore traversed for at least the reasons advanced above.

Further, the rejection sets forth that:

As discussed in previous Office actions, Prosenz discloses a plurality of elements having the claimed shape (Figure 5). Prosenz does not teach the material different from that the main portion of the barrier to be surrounding the rod. Thompson discloses a material (40) **different** from the barrier to be surrounding a connecting rod (42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the configuration of Thompson with the barrier of Prosenz in order to include a bushing, as taught by Thompson. **The bushing meets the recitations regarding the bore.** (Emphasis added)

In connection with the material 40 being different, it is submitted that just being different does not amount to an energy absorbing material; and the position that the “bushing meets the recitations . . .” is only good under § 102 and, since the rejection is made under § 103, a reason why the hypothetical person of ordinary skill would understand the relevance of this position has not been properly advanced.

The rejection further sets forth that:

The materials are not disclosed by Prosenz in association with the energy absorbing material (8); however, these materials are well known for use in crash barriers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used polytetrafluoroethylene as a coating on the coupling structure of Prosenz, in order to ease connection and disassembly of adjacent barriers, for example. **This meets claim recitations.**

In rebuttal, the quasi § 102 rejection “this meets the claim recitations” is noted and

submitted as failing to establish a *prima face* case under § 103. Further, polytetrafluoroethylene is known for low friction/friction reducing, non-stick characteristics. Its use as an energy absorbing material is challenged. The Examiner is request to support this position with a suitable citation clearly establishing the energy absorbing characteristics relied upon for rejection.

The rejection of claim 6 under 35 U.S.C. 103(a) as being unpatentable over Prosenz and Thompson as applied above, and further in view of Smith (U.S. Patent 5,022,781), is traversed.

This rejection advances that:

Smith teaches a barrier having a cup lined bore (34, Figure 3) for accommodating a rod. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the cup lined bore of Smith with the barrier of Prosenz in order to strengthen the bore and/or easily manufactured the barrier having a bore therein.

At first blush it would appear that making a device more complex via the addition of a cup to line a bore would amount to the very reverse of that position assumed by the examiner. That is to say, adding a further element to the mix would increase the difficulty of fabrication not reduce it and it is pure conjecture as to any increase in strength that may result. The citation of a reference supporting this position is deemed necessary,

The rejection of claim 12 under 35 U.S.C. 103(a) as being unpatentable over Prosenz/Thompson/Smith as applied above, and further in view of Tagg (U.S. Patent 6,837,647) is respectfully traversed.

The rejection advances that:

Tagg discloses optionally interconnecting barriers with a tubular pin having integral anchor members (43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the pin of Tagg with the barrier of

Prosenz in order to obtain a more secure connection, as taught by Tagg.

A review of the Tagg reference fails to reveal disclosure that the connection arrangement of Tagg produces a more secure connection than that which is provided by a pin of the nature used in Prosenz. If this rejection is to be maintained it is deemed necessary to identify using column/line, the portions of Tagg that actually support the otherwise conclusatory position taken in this rejection. After all, in order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required.

#### Conclusion

It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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